



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 31, 1995

Mr. H. Chuck Bauman
Assistant District Attorney
Smith County Courthouse
100 N. Broadway, Suite 304
Tyler, Texas 75702

OR95-727

Dear Mr. Bauman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32269.

Smith County (the "county") received two open records requests for copies of all records in the possession of the county sheriff's office pertaining to the arrest, detention, and prosecution of Tony Neyshea Chambers for capital murder and other previous offenses and incarcerations. Also, the requestor seeks copies of the county sheriff's records related to investigations of Brian Brooks and William Pannell in "connection with this or other cases in which they may have been involved." Finally, the requestor asks to "review and/or copy the file maintained on Mr. Chambers' capital case by the Smith County Regional Crime Laboratory." You inform us that Chambers was convicted of capital murder, the Texas Court of Criminal Appeals affirmed the conviction, and Chambers is currently seeking a postconviction writ of habeas corpus in federal court. You contend that all of the information requested relates to pending litigation. Additionally, you contend that releasing the information would adversely affect the prosecution of Chambers. You contend that the records requested are excepted from required disclosure by sections 552.103 and 552.108 of the Government Code. You state that the records submitted for our review constitute all of the responsive records maintained by the county sheriff's office related to this open records request.

Section 552.103(a) applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

Additionally, section 552.103(b) provides that the state or a political subdivision is considered to be a party to litigation of a criminal nature until the defendant has exhausted all postconviction remedies in state and federal court.

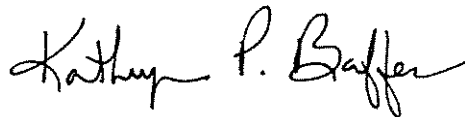
To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasijudicial proceeding. Open Records Decision No. 588 (1991). In this instance you have made the requisite showing that the requested information regarding Chambers relates to pending litigation for purposes of section 552.103(a).

We note that if the opposing party in the litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In part, the records contain the sort of basic offense report information that the defendant has already seen. Section 552.103 is inapplicable to this sort of information. *See* Open Records Decision No. 597 (1991). Therefore, the county may not withhold from disclosure basic offense report information. Moreover, section 552.108 is inapplicable to basic offense report information. *See* Open Records Decision No. 127 (1976). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Regarding the remaining portions of the open records request, you state that no responsive documents exist. Since the act only applies to information in existence and does not require a governmental body to prepare new information, if the county possesses no records regarding the remaining portions of the request, it need not prepare any information for the requestor. Open Records Decision No. 605 (1992).

Because we have determined that section 552.103(a) of the Government Code protects from disclosure portions of the requested information, we do not address whether section 552.108 applies to those portions. We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, reading "Kathryn P. Baffes". The signature is fluid and cursive, with the first name "Kathryn" being more prominent than the last name "Baffes".

Kathryn P. Baffes
Assistant Attorney General
Open Government Section

KPB/KHG/rho

Ref: ID# 32269

Enclosures: Submitted documents

cc: Mr. Greg Gladden
3017 Houston Avenue
Houston, Texas 77009
(w/o enclosures)